

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

FILED

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE CRUZ-CORTEZ,

Defendant.

Magistrate Dockets 08 MJ 0940

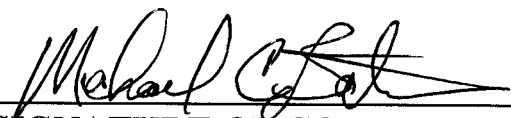
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIACOMPLAINT FOR VIOLATION OF:

Title 8, U.S.C., Section 1326
 Expired Alien Found in the
 United States (Felony)

The undersigned complainant, being duly sworn, states:

On or about **August 1, 2007**, within the Southern District of California, Defendant **Jose CRUZ-Cortez**, an alien, who previously had been excluded, deported, and removed from the United States to Mexico, was found in the United States, without the Attorney General or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the Defendant's reapplication for admission into the United States; in violation of Title 8, United States Code, Section 1326.

And the complainant states that this complaint is based on the attached probable cause statement, which is incorporated herein by reference.


 SIGNATURE OF COMPLAINANT
 Special Agent Michael Bateman
 U.S. Immigration & Customs Enforcement

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 27th DAY OF MARCH, 2008.


 HONORABLE WILLIAM MCCURINE, JR.
 UNITED STATES MAGISTRATE JUDGE


PROBABLE CAUSE STATEMENT

I, Special Agent (S/A) Michael Bateman, U.S. Immigration & Customs Enforcement ("ICE"), declare under penalty of perjury, the following is true and correct:

On August 1, 2007, the Escondido Police Department responded to a noise complaint at an apartment complex. The Escondido Police officers came in contact with the defendant, Jose CRUZ- Cortez, who was subsequently arrested at the apartment complex for being under the influence of methamphetamine and in possession of a .357 colt revolver that was loaded with ammunition (six rounds). CRUZ was charged with: (1) Felon in Possession of a Firearm (Cal. PC 12021(a)(1)); (2) Under the Influence with a Firearm (Cal. H&S 11550(e)); (3) Delaying or Resisting a Police Officer (Cal. PC 148(a)(1)); (4) Illegal Possession of Ammunition (Cal. PC 12316(b)(1); and (6) Carrying Loaded Firearm and Not the Registered Owner (Cal. PC 12031(a)(2)(F)). On or about August 15, 2007, the defendant pled guilty in state court to being a felon in possession of a firearm, in violation of Cal. PC 12021(a)(1), and was sentenced to 16 months in state prison. The defendant is expected to be released from state prison in mid-April 2008.

On November 28, 2007, during the course of his official duties, S/A T. Sheehan with ICE spoke with officers at the Escondido Police Department who suspected that CRUZ was an illegal alien. S/A Sheehan learned that CRUZ had been booked into the San Diego County Jail in August 2007 for numerous offenses. S/A Sheehan learned that CRUZ pled guilty to being a felon in possession of a firearm and was serving a sentence in state prison.

I conducted a more thorough review of the records related to CRUZ using immigration databases, such as the Central Index System and the Deportable Alien Control System. The records revealed CRUZ was most recently deported from the United States to **Mexico** on **February 22, 2007** through the **San Ysidro, California, Port of Entry**. The records contained a Form I-213 (Record of Deportable Alien) identifying CRUZ as a citizen of Mexico, born in Tijuana, Baja California, Mexico, on May 3, 1981. The records also contained an immigration judge's order of deportation dated May 1, 2002, as well as a record of exclusion and deportation executed on February 22, 2007, which contained a photograph and fingerprint of CRUZ. These records show that CRUZ has not applied for permission from the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security, to return to the United States after being removed.


U. McQuinn